IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2442 OF 2005

Shri Nivas Krishnarao Katkar ...Petitioner
V/s.
Sou.Megha Nivas Katkar & Ors. ...Respondents

Shri Umesh Mankapure for the Petitioner.
Shri Amit Sale for Respondent No.1.
Shri P.S. Hingorani, APP for the State.

CORAM : V.M. KANADE, J.

DATED : SEPTEMBER 10, 2007

P.C. :-

. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

2. The petitioner is challenging an order passed by the Joint Civil Judge, Junior Division and Judicial Magistrate, First Class, Sangli in Criminal Misc. Application No.67/2004 and judgment and order dated 18th August, 2005 passed by the 4th Ad-hoc Additional Sessions Judge, Sangli, in Criminal Revision Application No.20/2005 dismissing the revision filed by him against the said order. Being aggrieved by the said orders, the petitioner has filed the present petition under Article

227 of the Constitution of India. By the aforesaid order, the Sessions Judge was pleased to dismiss the revision application and confirmed the order which was passed by the Magistrate who had allowed the application filed by the respondent herein for maintenance under Section 125 of Cr.P.C.

3. The learned Counsel for the petitioner submitted that both the Courts below had erred in granting maintenance to the respondent no.1 particularly when she had deserted the petitioner and had filed Consent Terms in the application which was filed by the petitioner for restitution of the conjugal rights and by the said consent terms, she had received an amount of Rs.35,000/- towards lumsum in the year 1995 and had given up her rights of maintenance. He submitted that in fact, respondent no.1 had admitted this fact in her cross-examination. He submitted that the respondent had not resumed cohabitation with the petitioner inspite of the various efforts were taken by him and as such, she is not entitled to maintenance under Section 125 of the Cr.P.C. He submitted that in the present case, there

was neither negligence nor refusal on the part of the petitioner to maintain her and on the contrary, respondent no.1 had on her own deserted the petitioner. He further submitted that in view of the provisions of Section 125(4), respondent no.1 was precluded from claiming maintenance. He submitted that respondent no.1 having voluntarily left the house is not entitled to claim maintenance as she waived her right of maintenance. He further submitted that Divorce Deed which was executed between the parties was binding on respondent no.1 particularly because there was custom between the parties of giving divorce by executing a Deed.

4. In support of the said submission, he relied upon the judgment of this Court in the case of **Anil S/o. Kashinath Dhanwate v/s. Kadubai Anil Dhanwate, reported in 2003(3) B Cr C 825** and the judgment in the case of **Popat Kashinath Bodke v/s. Kamalabai Popat Bodke and others, reported in 2003(1) B Cr C 757**. He also relied upon the judgment in the case of **Vithal Hiraji Jadhav v/s. Harnabai Vithal Jadhav and another, reported in**

2003(3) B Cr C 303.

5. The learned Counsel appearing on behalf of the respondents, on the other hand, submitted that the Consent Terms which were filed by the parties did not oust the jurisdiction of the court to grant maintenance. He submitted that such a clause in the contract or consent terms was against public policy and therefore, such restraint could not be imposed on the right of the wife to claim maintenance or enhance maintenance. He relied on the Division Bench Judgment of this Court in the case of **Geeta Satish Gokarna, Appellants v. Satish Shankarrao Gokarna, Respondent, reported in AIR 2004 BOMBAY 345.** He also relied on the judgment of the Single Judge of this Court in the case of **Tejaswini d/o Anandrao Tayade and another vs. Chandrakant Kisanrao Shirsat and another, reported in 2005(3) Mh.L.J. Page 137.** He also relied on the judgment of the Apex Court in the case of **Vanamala (SMT) v/s. H.M. Ranganatha Bhatta, reported in (1995) 5 SCC 299**.

6. In my view, the submission made by the learned

Counsel for the petitioner cannot be accepted. It is no doubt true that the parties have filed Consent Terms in view of the application which was taken by the petitioner for the restitution of conjugal rights and she had accepted Rs.35,000/- towards maintenance. The ratio in the judgment of **Anil Kashinath Dhanwate (supra)** and other judgments on which reliance has been placed by the learned Counsel for the petitioner will not be of any assistance particularly in view of the Division Bench judgment of this Court in the case of **Geeta Satish Gokarna (supra)**. Similar view has been taken by the learned Single Judge of this Court in the case of **Kaushalyabai Dinkar Mule, Applicant v. Dinkar Mahadeorao Mule (2001 CRI.L.J. 2292)** and also in the case of **Tejaswini (supra)**. In my view, the ratio of the judgment on which reliance is placed by respondent no.1 will apply and the bar provided under Section 125(4) will not apply to the facts and circumstances of the present case. Both the lower Courts have considered all records and have recorded the finding in favour of respondent no.1 that she is entitled to get maintenance under the provisions of Section 125. The petitioner

does not dispute or does not challenge the maintenance which is granted in favour of his daughter. Even if this amount is paid to respondent no.1, ultimately the said money would be utilised for the purpose of maintaining his own daughter. Respondent no.1 in her application has stated that in view of the expenditure incurred in giving education to her daughter, it is essential to grant maintenance to her which is one other additional factor, in my view, which has to be borne in mind while considering the request made by respondent no.1 for the maintenance. In the result, there is no merit in the submission of the learned Counsel for the petitioner.

. Writ Petition is dismissed. Rule is discharged.

(V.M. KANADE, J.)